

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

DAHN WORLD CO., LTD.,

Plaintiff

EUN HEE CHUNG,

Defendant

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Civil Action No. RWT 06-2170

MEMORANDUM OPINION

Pending before the Court are Defendant's Motion for Attorney's Fees and Expenses [Paper No. 45] and Bill of Costs [Paper No. 46]. For the reasons that follow, the Court will grant the motions.

I.

Plaintiff Dahn World Co., Ltd. ("Dahn") is a Korean corporation that filed suit in the United States District Court for the District of Arizona against Zhibin Zhong, an Arizona resident who was the registrant of the website that published Dahn's proprietary and confidential information based on Zhong's unauthorized access into Dahn's servers and intranet site. *See Dahn World Co., Ltd. v. Zhong*, Case No. 05-cv03477 (D. Ariz. 2006). Dahn subpoenaed billing records for the website that identified Defendant Eun Hee Chung, who is a Maryland resident, as the responsible financial party. *Id.* Accordingly, Dahn amended its complaint to assert the claims against Chung under the

Computer Fraud and Abuse Act¹ (“CFAA”), Digital Millenium Copyright Act² (“DMCA”), breach of contract, tortious interference with business relations, and misappropriation of trade secrets under the Maryland Uniform Trade Secrets Act³ (“MUTSA”). The District Court for the District of Arizona granted Chung’s motion to dismiss for lack of personal jurisdiction and awarded her attorneys’ fees of \$14,906 due to her status as the prevailing party in a contract dispute. *See* Ariz. Rev. Stat. 12-341.01.

On August 22, 2006, Dahn refiled its suit alleging the same five counts in this Court. [Paper No. 1]. The Court granted Chung’s motion for summary judgment on June 26, 2008. [Paper No. 44]. Chung now seeks an award of attorneys’ fees and costs under either the DMCA and the MUTSA.

II.

A. Motion for Attorneys Fee and Expenses

Chung contends that she is entitled to an award of her attorneys’ fees and costs incurred in defending this action under either the DMCA and the MUTSA. She seeks \$66,343.50 in attorneys’ fees and costs, which includes the fees she has incurred in bringing her motion for the award of attorneys’ fees and costs. Def.’s Reply to Pl.’s Opp. at 1. Because the Court finds that she is entitled to a recovery of attorneys’ fees and costs under the DMCA, the Court does not need to reach or address whether Chung is entitled to such an award under the MUTSA.⁴

¹18 U.S.C. § 1030.

²17 U.S.C. § 1201(a)(1)(A).

³Md. Code Ann., Comm. Law § 11-1201, *et seq.*

⁴The DMCA has a lower standard for the award of reasonable attorneys’ fees than the MUTSA. *Compare* 17 U.S.C. § 1203(b)(5) (granting discretionary award to “prevailing party”)

The DMCA provides that the Court “in its discretion may award reasonable attorneys fees to the prevailing party.” 17 U.S.C. § 1203(b)(5). In deciding whether to award attorneys’ fees under the DMCA, the Court may consider the motive, reasonableness of the fee, deterrence and compensation, and the ability of the nonmoving party to pay. *See Rosciszewski v. Arete Assocs., Inc.*, 1 F.3d 225, 234 (4th Cir. 1993) (considering the same four factors when evaluating motion for attorneys’ fees brought under 17 U.S.C. § 505, which provided that the district court could award attorneys’ fees to the prevailing party); *see also Lowry’s Reports, Inc. v. Legg Mason, Inc.*, 302 F. Supp. 2d 455, 463 (D. Md. 2004) (same).

As a threshold matter, Chung is eligible for an award of attorneys’ fees as she was undisputedly the prevailing party before this Court. 17 U.S.C. § 1203(b)(5). Here, all four factors support an award of attorneys’ fees. First, Dahn’s motive in bringing its complaints (in the Districts of Arizona and then Maryland) support an award of attorneys’ fees and costs to Chung because the evidence upon which Dahn rested its allegations in its complaints, namely the declaration of Nyun Haeng Kim, was weak, at best, in terms of Chung’s alleged liability. *See* Pl.’s Opp. to Def.’s Mot. for Summ. J., Ex. 15; *see, e.g. Contract Materials Processing, Inc. v. Kataleuna GMHB Catalysts*, 222 F. Supp. 2d 733, 744 (D. Md. 2002) (holding that whether the complaint was factually supported and grounded in the law influences the Court’s determination of the purpose of the lawsuit).

Second, the reasonableness of the attorneys fees and expenses sought are supported by the extensive lists of the work performed and expenses incurred, affidavits of the customary fees charged by the attorneys (who had experience litigating cases under the CFAA, DMCA and other

with Md. Code Ann., Comm. Law § 11-1204(1) (granting discretionary award if “a claim of misappropriation is made in bad faith”).

federal computer crime statutes) and paralegal involved as well as comparisons of the standard billing rates for the Maryland statistical area. *See* Def.’s Mot. for Attorneys’ Fees and Expenses, Exs. A, C, D, E. While Dahn contends that it “does not dispute the reasonableness of Defendant’s rates,” Dahn suggests that the Court should reduce the award because two attorneys should not be billing for the same task, some Westlaw and copying charges are unreasonable, and the number of hours billed for discovery are excessive. Pl.’s Opp. At 11. This contention is undermined by the Court’s review and finding that Chung’s attorneys apportioned the work so that *inter alia* the junior associate and paralegal performed the majority of the discovery in order to control the costs of the litigation while the partner reviewed the work. *See* Def.’s Mot. for Attorneys’ Fees and Expenses, Ex. A. However, as the United States Supreme Court recognized, “the most critical factor” in determining the reasonableness of time spent and hourly rate billed is the “degree of success obtained.” *Hensley v. Eckerhart*, 461 U.S. 424, 434-35 (1983) (holding that when a party “has obtained excellent results, his attorney should recover a fully compensatory fee.”). As such, the Court finds that the fees and expenses are reasonable.

Third, the Court finds that an award of attorneys’ fees and costs in this case would support the twin goals of deterrence and compensation. Fourth and finally, ability to pay weighs in Chung’s favor as well because she is a single mother with three children who earns approximately \$56,000 to \$67,000 a year while Dahn is a corporation that does business in seven countries in 600 centers that is in a better position to absorb these costs than she is. Def.’s Mot. for Attorneys’ Fees, Ex. B.

B. Motion for Bill of Costs

Chung contends that she is entitled to an award of a bill of costs, specifically including the

costs of hiring an interpreter to attend her depositions.

Federal Rule of Civil Procedure 54 provides that “[u]nless a federal statute, these rules, or a court order provides otherwise, costs – other than attorney’s fees – should be allowed to the prevailing party.” Fed. R. Civ. P. 54(d)(1). Under 28 U.S.C. § 1920, the Court may include certain expenses, including interpreter services as costs. 28 U.S.C. § 1920(6). The Court’s June 28, 2008, Order [Paper No. 37] awarded costs to Chung. Dahn objects to an award of costs for the interpreter retained by Chung for her deposition because it contends that the interpreter was not court-appointed and that Chung’s fluency in English (as demonstrated by her multiple degrees from universities in the United States) obviated the need for an interpreter. Pl.’s Opp. to Def.’s Mot. for Costs at 1. In support of this contention, Dahn cites to two instances in Chung’s deposition in which Chung corrected the interpreter’s interpretation of the question being asked and her answer to another question. *See id.*, Ex. 2.

When a party requests an interpreter for a deposition, the cost for the service is borne by the party seeking the deposition. *East Boston Ecumenical Comm. Council, Inc. v. Mastorillo*, 124 F.R.D. 14, 15 (D. Mass 1989). The *Mastorillo* Court reasoned that the deponents, who were alleged not to speak English proficiently, should have the ability to have their questions and answers translated into their native language unless the opposing party was able to demonstrate that interpreters were not required. *Id.* The result in this case is no different. Chung admits that she speaks English, but contends – and it is undisputed – that English is not her native language, which is borne out by Chung’s birth and residence in Korea until after her first year of college. Moreover, the two instances in the deposition in which Chung sought clarification from the interpreter demonstrate her confusion and lack of comprehension as to the substance of the questions being

asked. Given the complex facts (including the technical jargon involved) as well as the complicated federal and state statutes involved in the case against her, it is not unreasonable or unexpected that Chung would require the assistance of an interpreter to ensure that she understood the questions she would be asked during her deposition. Dahn simply has not met its burden under *Mastorillo* of demonstrating why the interpreter's services were unnecessary and its bare allegation does not suffice.

CONCLUSION

For the foregoing reasons, the Court will **GRANT** Defendant's Motion for Attorney's Fees and Expenses [Paper No. 45] and Bill of Costs [Paper No. 46]. A separate order follows.

Date: February 5, 2009

/s/
Roger W. Titus
United States District Judge